

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

GREG ABBOTT, in his capacity as
GOVERNOR OF THE STATE OF TEXAS,
and THE STATE OF TEXAS,

Defendants.

Case No. 1:23-cv-00853-DAE

JOINT STATUS REPORT

Pursuant to Judge Howell's November 21, 2024 order, ECF 257, the parties submit this joint status report and state as follows:

1. Counsel for the United States and for the Defendants held multiple telephonic conferences to meet and confer regarding the scope of further discovery and the timeline for completing such discovery.
2. Defendants continue to maintain that additional discovery is not needed and is inappropriate given that: the controlling legal standards announced by the en banc Fifth Circuit's majority opinion make much additional discovery legally irrelevant, Defendants' Supplemental Brief, ECF 228 at 19–24, Defendants' Motion to Clarify, ECF 250 at 2; the United States decided not to offer arguments based on present or future navigability and not to ask for additional discovery of any kind, Plaintiff's Proposed Findings, ECF 236 at 1–3, Plaintiff's Pretrial Disclosures, ECF 241 at 2; and this Court represented that it would not order additional discovery if the Fifth Circuit permitted this case to proceed as a bench trial, Aug. 6th Hearing Tr.

at 22, 26; Aug. 7th Hearing Tr. at 25. *See United States v. Sineneng-Smith*, 590 U.S. 371 (2020). Defendants preserve this argument, while acknowledging the Court's position on this issue.

3. Based on these discussions, however, the parties have developed the schedule and stipulations set forth in Paragraph 4 below, which they jointly and respectfully recommend that the Court adopt as the schedule for completing further discovery in this case. As shown below, the proposed schedule begins by requiring an exchange of amended initial disclosures pursuant to Fed. R. Civ. P. 26(a) on February 10, 2025. This provides a reasonable opportunity (taking into account the intervening winter holidays) to reassess what additional facts or information may be relevant to claims or defenses, and gives the United States an opportunity for client agency and leadership input from the incoming federal administration before serving the amended initial disclosures. Thereafter, the proposed schedule incorporates reasonably expeditious deadlines to complete fact and expert discovery, with all discovery closing by the end of May 2025.

4. More specifically, the parties recommend the following schedule and stipulations:

- Amended initial disclosures of both parties are due by Monday, February 10, 2025. Written discovery requests, requests for admission, and/or notices of fact depositions may not be served until after this date.
- The United States shall identify in writing no later than Monday, March 17, 2025, any new case-in-chief experts, and any previously identified experts expected to disclose new or amended case-in-chief opinions, including a summary of the anticipated subject-matter.
- Any new or amended case-in-chief expert reports of the United States are due by Monday, March 24, 2025.

- Defendants shall identify in writing no later than Monday, April 21, 2025, any new experts, and any previously identified experts expected to disclose new or amended opinions, including a summary of the anticipated subject-matter.
- Any new or amended expert reports of Defendants are due by Monday, April 28, 2025.
- The United States shall identify in writing no later than Friday, May 9, 2025, any new rebuttal experts, and any previously identified rebuttal experts expected to disclose new or amended rebuttal opinions, including a summary of the anticipated subject-matter.
- Any new or amended rebuttal expert reports of the United States are due by Friday, May 16, 2025.
- All discovery shall close on Friday, May 30, 2025.
- The parties agree not to notice the deposition of any individual that was previously deposed in any earlier phase of this case, except: (1) if such individual is newly identified as an expert or rebuttal expert pursuant to Fed. R. Civ. P. 26(a)(2) or submits a new or amended expert report or rebuttal expert report; (2) if such individual is designated by the opposing party to testify in response to a 30(b)(6) deposition notice served after February 10, 2025; or (3) as reasonably necessary to discover information relating to events occurring after the close of the prior discovery period on July 19, 2024.
- The parties agree that no deposition shall be noticed prior to the exchange of amended initial disclosures on February 10, 2025.

Dated: December 6, 2024

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CERTIFICATE OF SERVICE

I certify that on December 6, 2024, a copy of this filing was served on counsel of record through the Court's electronic filing system.

/s/ Brian H. Lynk
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